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Supreme Court, U.S.
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NO. 94-2019

In the Supreme Court of the United States

OCTOBER TERM, 1995

ORYX ENERGY COMPANY,
Petitioner

VERSUS

YVETTE BOURQUE, wife of and STEPHEN BOURQUE, SAFETY TECHNOLOGY AND OILFIELD PROTECTORS, INC., and AETNA CASUALTY & SURETY COMPANY
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA COURT OF APPEAL, FIRST CIRCUIT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI ON BEHALF OF RESPONDENT, SAFETY TECHNOLOGY AND OILFIELD PROTECTORS, INC.

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RESPONSES TO QUESTIONS PRESENTED

Respondent, Safety Technology and Oilfield Protectors, Inc. ("STOP"), opposes the Petition of Oryx Energy Company (formerly Sun Exploration & Production Company and hereinafter referred to as "Oryx") for Writ of Certiorari and responds to the questions presented by Oryx on page i of the Petition as follows:

Question No. 1

> "Whether the state court of appeal incorrectly decided that state law determined whether an employee covered by the Longshoremen's & Harbor Workers' Compensation Act could recover from the non-negligent charterer of a vessel for personal injuries caused by the charterer's ultrahazardous activity of well testing from a vessel in navigable waters because that activity was not a traditional maritime activity and therefore not within admiralty jurisdiction."

Response to Question No. 1

The state court of appeal and the trial court were correct in applying state law rather than maritime law. The touchstone United States Supreme Court cases on this issue have held that a tort action falls within admiralty or maritime jurisdiction if the claim satisfies conditions both of location and of connection with maritime activity. *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972); *Foremost Insurance Co. v. Richardson*, 457 U.S. 668, 102 S.Ct. 2654, 73 L.Ed.2d

300 (1982); *Sisson v. Ruby,* 497 U.S. 358, 110 S.Ct. 2892, 111 L.Ed.2d 292 (1990); *Grubart v. Great Lakes Dredge & Dock Co.,* ___ U.S. ___, 115 S.Ct. 1043, ___ L.Ed.2d ___ (1995). Although the plaintiff's accident occurred on navigable waters, thus satisfying the location test, both the trial court and the court of appeal correctly held that the relevant activity did not bear a significant relationship to traditional maritime activity. Despite Oryx's argument, neither the trial court nor the court of appeal contradicted *Sisson v. Ruby, supra,* or the recently decided *Grubart v. Great Lakes Dredge & Dock Co., supra.* In fact, both *Sisson* and *Grubart* recognize that admiralty jurisdiction is invoked only when an accident occurs on navigable waters (the location test) and the claim has a connection with maritime activity (the connection or nexus test). The connection test had two prongs: the incident must have a potentially disruptive impact on maritime commerce and the activity giving rise to the incident must show a substantial relationship to traditional maritime activity. *Grubart,* ___ U.S. at ___, 115 S.Ct. at 1048. The lower courts in this case correctly enunciated the elements of the test and reached the correct result.

Question No. 2

> "Whether the state court of appeal incorrectly decided that state law made void and unenforceable the defense and indemnity provisions of a contract under which the indemnitor leased equipment to the indemnitee that provided it to a worker covered under the Longshoremen's & Harbor Workers' Compensation Act who was injured on a vessel on navigable waters while engaged in a maritime employment."

Response to Question No. 2

The trial court and the state court of appeal were correct in finding that the contract between Oryx and STOP was subject to state law, and thus LSA-R.S. 9:2780 (also known as "the Louisiana Oilfield Anti-Indemnity Act" or "the Anti-Indemnity Act") was applicable. As explained in Response to Question No. 1, this is a matter governed by state law, not maritime law, and therefore both the trial court and the appellate court correctly held that LSA-R.S. 9:2780 should be applied. Furthermore, even if admiralty tort jurisdiction did not exist, the contract at issue was non-maritime in nature and thus governed by state law. Despite Oryx's assertion, the worker here was not engaged in maritime employment and the contract's primary obligation was non-maritime. Finally, the Anti-Indemnity Act applies to this contract because the contract pertains to a well, and the Anti-Indemnity Act clearly applies to work which is performed on a well.

RULE 29.1 LISTING

SAFETY TECHNOLOGY AND OILFIELD PROTECTORS, INC. (STOP), at the time of the accident fiving rise to this litigation, was a wholly owned subsidiary of Camco, Inc. In 1988, STOP merged with Camco, Inc. and became a division of Camco, Inc. Camco has since merged to become part of Camco International, Inc. STOP does not have and has never had any subsidiary corporations.

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JURISDICTION

The judgment of the Louisiana Court of Appeal, First Circuit, was entered on October 7, 1994. Petitioner timely applied for a writ of certiorari with the Louisiana Supreme Court on November 7, 1994. The Louisiana Supreme Court denied the Application on January 13, 1995 (reported at 648 So.2d 1340 (La. 1995)). Petitioner filed its Petition for Writ of Certiorari with this Court on June 12, 1995. Respondent received a copy of said Petition on June 14, 1995. Respondent timely requested and received an extension of time in which to file an opposing brief to and including August 14, 1995.

Petitioner has invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1257. Respondent does not dispute the jurisdiction of this Court.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

United States Constitution, art. III, § 2:

"The judicial power shall extend...to all cases of admiralty and maritime jurisdiction."

28 U.S.C. § 1333

"The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

"(1) Any civil cases of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to

which they are otherwise entitled."

Louisiana Statutes Annotated: Revised Statutes 9:2780 (West 1991):

"A. The legislature finds that an inquity is foisted on certain contractors and their employees by the defense or indemnity provisions, either or both, contained in some agreements pertaining to wells for oil, gas, or water, or drilling for minerals which occur in a solid, liquid, gaseous, or other state, to the extent those provisions apply to death or bodily injury to persons. It is the intent of the legislature by this Section to declare null and void and against public policy of the state of Louisiana any provision in any agreement which requires defense and/or indemnification, for the death of bodily injury to persons, where there is negligence or fault (strict liability) on the part of the indemnitee or an agent or employee of the indemnitee, or an independent contractor who is directly responsible to the indemnitee.

"B. Any provision contained in, collateral to, or affecting an agreement pertaining to a well for oil, gas, or water, or drilling for minerals which occur in a solid, liquid, gaseous, or other state, is void and unenforceable to the extent that it purports to or does provide for the defense or indemnity, or either, to the indemnitee against loss or liability for damages arising out of or resulting from death or bodily injury to persons, which is caused by or results from the sole or concurrent negligence or fault (strict liability) of the indemnitee, or an agent, employee, or an independent contractor who is directly responsible to the indemnitee.

"C. The term 'agreement,' as it pertains to a well for oil, gas, or water, or drilling for minerals which occur in a solid, liquid, gaseous, or other state, as used in this Section, means any agreement or understanding, written or oral, concerning any operations related to the exploration, development, production, or transportation of oil, gas, or water, or drilling for minerals which occur in a solid, liquid, gaseous, or other state, including but not limited to drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, altering, plugging, or otherwise rendering services in or in connection with any well drilled for the purpose of producing or excavating, constructing, improving, or otherwise rendering services in connection with any mine shaft, drill, or other structure intended for use in the exploration for or production of any mineral, or an agreement to perform any portion of any such work or services or any act collateral thereto, including the furnishing or rental of equipment, incidental transportation, and other goods and services furnished in connection with any such service or operation."

STATEMENT OF THE CASE

Petitioner, Oryx Energy Company (formerly Sun Exploration & Production Company and hereinafter "Oryx"), owned a well site near Belle Island, Louisiana, identified as Well No. 13. Well No. 13 was a gas lift well consisting of a Christmas tree and some piping with a protective wooden platform constructed around it. In late 1986 or early 1987, Oryx decided to test the well to determine whether the zone was still oil productive. In connection with this decision, Oryx accepted a bid from Pressure Readout Technology, Inc. ("Pro-Tech") to test the well. Ultimately, two (2)

Pro-Tech employees worked at the well, including the plaintiff in the original suit, Steven Bourque ("Bourque)".

Well No. 13 had a history of producing hydrogen sulfide (H2S), a colorless gas which is a common byproduct of the disintegration of organic matter and not infrequently found in oil below the surface. The gas can be dangerous as it interferes with the ability of human cells to utilize oxygen. Therefore, Oryx made a verbal request to respondent, Safety Technology and Oilfield Protectors, Inc. ("STOP"), for the hydrogen sulfide safety equipment Oryx felt was necessary to test the well. Pursuant to this contract, STOP furnished self-contained breathing apparatus ("SCBA") units to Oryx to be used in the testing of the well. The SCBA's provided were state of the art, positive pressure devices that enable air to be inhaled from a pressurized cylinder or air tank worn on the user's back and expelled through an exhalation valve on the face mask, thus protecting the user from hydrogen sulfide.

Due to the smallness of the well structure, Oryx chartered two (2) barges from which to conduct the well test. The barges were towed to Well No. 13 and moored next to the well, where they remained for the duration of the job, which lasted three (3) days. On February 9, 1987, while working as a well tester at Well No. 13 aboard one of these barges, Bourque was exposed to hydrogen sulfide and, as a result, sustained post traumatic stress disorder.

Bourque and his wife, Yvette Bourque, subsequently filed suit in state court to recover for Bourque's injuries. Bourque sued Oryx as the owner of the well and charterer of the barges used during the well testing, alleging that

Oryx was both negligent and strictly liable under Louisiana law. Additionally, Bourque named as a defendant STOP, claiming that STOP was negligent for having furnished an alleged defective SCBA. Oryx filed a cross-claim against STOP, claiming contractual indemnity. Aetna Casualty & Surety Company ("Aetna"), which had provided Bourque with benefits pursuant to the Longshore & Harbor Workers Compensation Act (LHWCA), 33 U.S.C. § 901, *et seq.*, intervened to recover compensation payments made to Bourque.

Trial in this case commenced on June 1, 1992, and concluded on June 8, 1992, in the 16th Judicial District Court for the Parish of St. Mary, State of Louisiana. The district court entered judgment finding that this matter was not within the scope of admiralty jurisdiction and therefore governed by Louisiana law. The district court further found that STOP was neither strictly liable nor negligent, and that Oryx was also not negligent, but was engaged in an ultra-hazardous activity, and therefore was strictly liable under Louisiana law. As the district court found that this matter was governed by state law, it held that the Louisiana Oilfield Anti-Indemnity Act (LSA-R.S. 9:2780) applied to the contract between Oryx and STOP, invalidating the indemnity provisions of the contract. Finally, the district court found that Bourgue was 20% comparatively negligent because he had breached the face seal of the SCBA which allowed the intrusion of hydrogen sulfide into the mask. Acccordingly, the district court entered judgment in favor of plaintiffs against Oryx, but reduced their award by 20%, and dismissed the plaintiffs' claim against STOP, as well as Oryx's cross-claim against

STOP. A copy of the district court's Reasons for Judgment is found in the Appendix of Oryx's Petition, page 5.

An appeal was taken by both Oryx and Bourque. The Louisiana Court of Appeal, First Circuit, affirmed the trial court's judgment in all respects in an unpublished decision. In so affirming, the appellate court correctly applied the seminal Supreme Court cases on the reach of federal maritime tort jurisdiction, *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972); *Foremost Insurance Co. v. Richardson*, 457 U.S. 668, 102 S.Ct. 2654, 73 L.Ed.2d 300 (1982); and *Sisson v. Ruby*, 497 U.S. 358, 110 S.Ct. 2892, 111 L.Ed.2d 292 (1990).[1] The appellate court agreed with the trial court that well testing did not have a sufficient maritime flavor and therefore did not have a substantial relationship to traditional maritime activity in order to qualify for maritime jurisdiction. Therefore, the appellate court affirmed the district court's holding that Louisiana law, rather than federal maritime law, governs this case. The apellate court also affirmed the rest of the district court's judgment. A copy of the appellate court's opinion is found in the Appendix of Oryx's Petition, page 58.

The Louisiana Supreme Court denied the petitioner's application for certiorari. Petitioner subsequently filed its Petition for Writ of Certiorari with this Court.

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[1] When the appellate court rendered its decision, this Court had not yet handed down its decision in *Grubart v. Great Lakes Dredge & Dock Co.*, ___, U.S. ___, 115 S.Ct. 1043, ___ L.Ed.2d ___ (1995).

REASONS PETITION FOR WRIT OF CERTIORARI MUST BE DENIED

Petitioner claims to seek a review by this Court because the decisions of the lower courts conflict with this Court's holdings setting forth the test for admiralty jurisdiction. Oryx's Petition, p. 19. Petitioner also suggests that this Court should jettison the present "location-plus-nexus" test for determining admiralty jurisdiction in favor of a pure "locality" test, which was in place prior to *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972). Oryx's Petition, p.p. 21-22.

Petitioner's claims are without merit. This Court has recently visited the issue of admiralty jurisdiction in *Grubart v. Great Lakes Dredge & Dock*, ____ U.S. ____, 115 S.Ct. 1043, ____ L.Ed.2d ____ (1995). In *Grubart*, this Court extensively discussed the evolution of the test for admiralty jurisdiction from its beginnings as a pure "locality" test to its present "location-plus-nexus" form. This Court did not decide to jettison the present test in favor of the traditional one. Instead, this Court re-affirmed the present test as originally set out in *Executive Jet* and affirmed and refined in *Foremost Insurance Co. v. Richardson*, 457 U.S. 668, 102 S.Ct. 2654, 73 L.Ed.2d 300 (1982) and *Sisson v. Ruby*, 497 U.S. 358, 110 S.Ct. 2892, 111 L.Ed.2d 292 (1990). In *Grubart*, this Court stated:

> [A] party seeking to invoke federal admiralty jurisdiction pursuant to 28 U.S.C. § 1333(1) over a tort claim must satisfy conditions both of location and of connection with maritime activity. A court applying the location and of connection

> court applying the location test must determine whether the tort occurred on navigable water or whether the injury suffered on land was caused by a vessel on navigable water. [Citation omitted]. The connection test raises two issues. A court, first, must 'assess the general features of the type of incident involved' to determine whether the incident has 'a potentially disruptive impact on maritime commerce.' [Citations omitted]. Second, a court must determine whether 'the general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.' [Citations omitted].

Grubart, ____ U.S. at ____, 115 S.Ct. at 1048 (citing *Sisson v. Ruby, supra*).

This test, so recently affirmed by this Court, was exactly the test applied by the lower courts in the case at bar in determining that state law, rather than admiralty law, governs this matter. The lower courts are in conflict with neither *Sisson* nor *Grubart*. Despite the assertions to the contrary, petitioner is distressed only by the conclusion of the lower courts that state law applies, not by the test itself. Accordingly, this Court should deny petitioner's Petition for Writ of Certiorari.

A. THE LOWER COURTS WERE CORRECT IN HOLDING THAT STATE TORT LAW RATHER THAN MARITIME LAW APPLIES.

In its Petition, Oryx argues that the trial court and state court of appeal erred in finding that this matter is governed by state law instead of maritime law. Oryx con-

tends that the lower courts incorrectly "down-played" the fact that accident at the basis of this litigation occurred on navigable waters on a vessel and that the lower courts "hyper-generalized" the activity of Oryx which gave rise to the incident. These arguments are, however, without merit.

The lower courts correctly noted that in order to confer admiralty jurisdiction, Oryx, as the party seeking to invoke maritime jurisdiction, has the burden of proving the two-part "locality-plus-nexus" test first established by the United States Supreme Court in *Executive Jet, supra,* and affirmed and expanded in *Foremost, supra,* and *Sisson, supra.*[2] The state court of appeal correctly enunciated the elements of this test by stating that, in order to confer admiralty jurisdiction, "[t]he tort must have occurred on or over navigable waters, and the wrong alleged must 'bear a significant relationship to traditional maritime activity.' Opinion of the state court of appeal, Appendix to Oryx's Petition, p. 81. (Citations omitted).

In its Petition, Oryx focuses on the "locality" prong of this test, continually stressing the fact that the accident occurred on a vessel in navigable waters. It is uncontested that the incident in question occurred aboard a barge moored adjacent to a well located in navigable waters. Although this may be sufficient to meet the "locality" prong of the test, the "nexus" prong is not met. As stated above, this Court has held that the "nexus" or "connection" test raises two issues. A court must first assess the general features of the type of incident involved to

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[2] As noted earlier, *Grubart* had not yet been decided when the state courts rendered their opinions.

determine whether the incident has a potentially disruptive impact on maritime commerce. Second, a court must determine whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity. Both of these factors must be met in order to confer maritime jurisdiction. *Grubart*, ____ U.S. at ____, 115 S.Ct. at 1048 (citing *Sisson v. Ruby*, *supra*). The lower courts, applying the correct test, found that the activity giving rise to the incident, well-testing, did not have a substantial relationship to traditional maritime activity. Therefore, the "nexus" or "connection" test was not met, and state law applied.

Oryx admits in its Petition that Bourque "was a well-tester." Oryx Petition, p. 8. Oryx also admits that the activity in which the plaintiff was engaged when this incident occurred was well testing. Oryx Petition, p. 9. Both the trial court and the state court of appeal correctly found that well-testing is an activity related to the exploration for and production of oil and gas, not a traditional maritime activity. In so finding, the lower courts relied upon *Dominque v. Oil Drilling and Exploration Co.*, 923 F.2d 393 (5th Cir. 1991), *reh'g denied*, 940 F.2d 117 (1991), *cert. denied*, ____ U.S. ____, 112 S.Ct. 874, 116 L.Ed.2d 779 (1992). In *Dominque*, the United States Court of Appeals, Fifth Circuit, held that wireline services related to oil and gas exploration and drilling are distinctly non-maritime in nature, despite the fact that it takes on a "salty flavor" when the performance of the contract is more than incidently related to the execution of the vessel's mission. Using *Dominque* as a guide, the lower courts found that although the well-testing in the case at bar had a "salty flavor," it is distinctly non-maritime in nature. The lower courts were persuaded by the

fact that the well-testing process was not performed in a manner different in this case from the way which testing would occur on a land-based well. The essential nature of the activity is unchanged by the fact that it occurs in a maritime locale. Accordingly, the lower courts correctly held that well-testing does not bear a significent relationship to a traditional maritime activity sufficient to confer admiralty jurisdiction.

Oryx attempts to argue that the lower courts "hyper-generalized" the "relevant activity" engaged in when this incident occurred. Oryx asserts that "[t]he character of the activity of the petitioner at the appropriate level of generalization (not too high and not too low) was the use of a vessel to store and measure a liquid product which is closely akin to the very traditional activity of using vessels to store and transport cargo." Oryx's Petition, p.p. 34-35. This argument is disingenuous. It is undisputed that Oryx desired to test Well No. 13 to determine if the zone was still oil productive. Oryx contracted with Bourque's employer, Pro-Tech, to test the well. Bourque was a well tester. When Bourque was exposed to hydrogen sulfide, he was engaged in well testing. It is clearly evident that the relevant activity engaged in when this incident occurred was well testing. Oryx's attempt to break down and re-define the activity so that it has some relationship to traditional maritime activity is simply semantic posturing.

The lower courts in this matter correctly applied both prongs of the "locality-plus-nexus" test, and reached the correct conclusion that state law, rather than admiralty law, applies. Accordingly, this Court should deny Oryx's Petition for Writ of Certiorari.

B. STATE LAW, AND THEREFORE THE LOUISIANA OILFIELD ANTI-INDEMNITY ACT, APPLIES TO ORYX'S CONTRACT WITH STOP.

As both the trial court and the state court of appeal found that Louisiana law rather than maritime law governs, the lower courts held that the provisions of the Louisiana Oilfield Anti-Indemnity Act (LSA-R.S. 2780) applied, rendering void the indemnity provision of the contract between Oryx and STOP. For the reasons stated above, the lower courts were correct in finding that state law, and thus the Anti-Indemnity Act, is applicable in this matter and governs the Oryx-STOP contract.

Even if state tort law did not apply, the Oryx-STOP contract would still be a non-maritime contract governed by state law. To support their findings that this contract is non-maritime in nature, the lower courts cite the case *Dominque v. Ocean Drilling and Exploration Co., supra.* In *Dominque,* the Fifth Circuit set forth six factors used to determine whether a contract is maritime or non-maritime. These six factors are:

1) What does the specific work order in effect at the time of the injury provide?
2) What work did the crew assigned under the work order actually do?
3) Was the crew assigned to work aboard a vessel in navigable waters?
4) To what extent did the work being done relate to the mission of the vessel?
5) What was the principal work of the injured worker?

6) What work was the injured worker actually doing at the time of the injury?

Id. at 395-396.

The verbal work order at issue in the case at bar called for the furnishing of equipment necessaary to perform a well test on a well producing hydrogen sulfide. This was the nature of the work performed by the STOP employees, the crew assigned under the work order. The work performed by the STOP employees and the furnishing of the respirators to the well testers was performed aboard a vessel in navigable waters. These services, however, were all particular to the oil and gas industry and, viewed apart from the circumstances under which they were performed, are distinctly non-maritime in nature. The equipment provided by STOP would also be provided if the well tests were to be performed on land or on a fixed platform. The fact that the work barge was a "vessel is nothing more than incidental to its purpose here of serving as a work platform" for the performance of the well test. *Dominque,* 923 F.2d at 397. The final two *Dominque* factors involve the work being performed by the injured party. As previously stated, the work being performed by the plaintiff, and the work for which STOP equipment was furnished, was the testing of the well. Thus, the contract does not meet the *Dominque* test to qualify for a maritime contract. *See also, Thurmond v. Delta Well Surveyors,* 836 F.2d 952 (5th Cir. 1988), *reh'g denied,* 844 F.2d 788 (5th Cir. 1988) (holding that even though a contract contains several maritime and non-maritime obligations, the contract is non-maritime if the primary obligation is non-maritime).

Furthermore, the Louisiana Anti-Indemnity Act applies to the Oryx-STOP contract because the contract pertains to a well. LSA-R.S. 9:2780(c) specifically provides that agreements affected by the Act include any agreement or understanding concerning an operation related to the exploration, development, production, or transportation of oil, gas, or water, including testing and the furnishing or rental of equipment and other goods and services. It is undisputed that the plaintiff was a well-tester. It is also undisputed that the well being tested by the plaintiff was believed to produce, among other things, hydrogen sulfide, a toxic gas. Therefore, in order for the well-testers to accomplish the testing of the well, it was necessary for Oryx to provide the well-testers with the SCBA units it rented from STOP. As the agreement between Oryx and STOP was to furnish and rent SCBA units and other equipment connected to the testing of the well, it follows that the Oryx-STOP contract is covered by Louisiana's Anti-Indemnity Act.

Accordingly, the lower courts correctly held that the Louisiana Anti-Indemnity Act applies because: 1) this matter is governed by state law; 2) the Oryx-STOP contract was non-maritime; and 3) the Louisiana Anti-Indemnity Act specifically applies to this activity.

C. THERE IS NO NEED FOR THIS COURT TO REVISIT THE ISSUES PRESENTED BY THE PETITION

As mentioned above, petitioner suggests that this Court should jettison the present "location-plus-nexus" test for determining admiralty jurisdiction in favor of a

pure "locality" test, which was in place prior to *Executive Jet.* Oryx's Petition, p.p. 21-22. Oryx argues that the present test is subjective and produces unpredictable results. Oryx's Petition, p. 22. Oryx holds out as evidence of the subjectivity of the present test the Louisiana Supreme Court case *Green v. Industrial Helicopters, Inc.*, 593 So.2d 634 (La. 1992), and argues that something is amiss when a passenger in a helicopter which falls into the sea has an admiralty claim but "a worker covered under the Longshoremen's & Harbor Workers' Compensation Act engaged in maritime employment injured on a vessel on navigable waters has only a state claim." Oryx Petition, p. 21.

Oryx misconstrues, however, both the holding of the Louisiana Supreme Court and the facts of this case. In *Green* the plaintiff was aboard a helicopter being carried to an offshore platform when the helicopter crashed. The Louisiana Supreme Court found that admiralty jurisdiction applied. In so holding, that court stated that "federal maritime jurisdiction is invoked whenever an accident occurs on the high seas and in furtherance of an activity bearing a significant relationship to a traditional maritime activity." *Green*, 593 So.2d at 636 (citing *Offshore Logistics v. Tallentire*, 477 U.S. 207, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986); *Executive Jet Aviation, supra*). The accident in *Green* occurred over navigable waters. That alone, however, was not sufficient to confer admiralty jurisdiction. The court found that admiralty jurisdiction was conveyed because the use of a helicopter to ferry passesngers from an island to the shore or vice versa was a function traditionally performed by waterborne vessels, and thus the activity had a significant relationship to a traditional

maritime activity. *Green*, 593 So.2d at 637 (citing *Tallentire, supra*).

Green is clearly distinguishable from the activity in the case at bar because the activity in *Green* had a significant relationship to a traditional maritime activity, *i.e.*, the ferrying of passengers from shore to an island. In the instant case, the worker, Bourque, was *not* engaged in maritime employment. He was a well tester, and well-testing does not have a significant relationship to any traditional maritime activity. The nexus prong of the "locality-plus-nexus" test is not met, and therefore state law, rather than admiralty law, applies. The fact that Aetna paid benefits pursuant to the LHWCA, repeatedly mentioned by petitioner as a significant fact, is not a deciding factor in this analysis.

In any event, this Court just recently considered the "locality-plus-nexus" test in *Grubart*. At that time, this Court did not jettison the test, but rather affirmed it. This Court noted that it was Congress which changed the pure "locality" test with the Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 740. *Grubart*, ____ U.S. at ____, 115 S.Ct. at 1047. The Extension of Admiralty Jurisdiction Act was passed to gather the odd cases into admiralty; this Court subsequently developed the "locality-plus-nexus" test to keep the odd cases out. There is no need for this Court to re-visit this issue. The present test is well reasoned and has been clearly defined. This is evidenced by the fact that the lower courts applied the correct test and reached the correct result.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari filed on behalf of Oryx should be denied.

Respectfully submitted,

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